

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

VIEW APARTMENTS, LP,

PLAINTIFF,

VS.

ZURICH AMERICAN INSURANCE
COMPANY,

DEFENDANT.

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CIVIL ACTION NO. 1:17-CV-990

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant Zurich American Insurance Company (“Zurich”) hereby removes the action styled and numbered, *View Apartments, LP v. Zurich American Insurance Company*, D-1-GN-17-004761, currently pending in the 98th Judicial District Court, Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division. For the reasons set forth below, removal of the state court action is proper under 28 U.S.C. §§ 1332, 1441, and 1446.

I. THE STATE COURT ACTION

1. On August 31, 2017, Plaintiff View Apartments, LP (“View”) filed its Original Petition in the 98th Judicial District Court in Travis County, Texas – Cause No. D-1-GN-17-004761.

2. View’s Original Petition alleges causes of action against Zurich for Breach of Contract, Violations of the Texas Deceptive Trade Practices Act, Violations of the Texas Insurance Code Chapter 541, Breach of the Duty of Good Faith and Fair Dealing, Common Law Fraud, and Misrepresentation.

II. ZURICH'S NOTICE OF REMOVAL IS TIMELY

3. Zurich has not been served with the petition and citation at this time. Accordingly, Zurich files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

III. VENUE IS PROPER

4. Venue is proper in this District under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this District.

IV. BASIS FOR REMOVAL JURISDICTION

5. Removal of this action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court and the federal courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332. Specifically, removal is proper because there is now, and was at the time this action was filed, complete diversity of citizenship between View and Zurich and the amount in controversy exceeds \$75,000 excluding interest, costs, and attorney's fees.

A. Citizenship of the Parties

6. Zurich American Insurance Company is an insurance company organized under the laws of the State of New York with its principal place of business in Illinois. Zurich is a citizen of both New York and Illinois for diversity jurisdiction purposes.

7. In Plaintiff's Original Petition, Plaintiff claims that View is a Delaware Limited Partnership that does business in Texas. View Apartments, L.P. is a Limited Partnership and the General Partner of View Apartments, L.P. is SC View GP Corporation. The citizenship of a limited partnership is determined by the citizenship of its partners.¹ SC View GP Corporation is a Delaware Corporation with its Principal Place of Business in Delaware. Based on the allegations in Plaintiff's original petition, View would be considered a citizen of Delaware for diversity

¹ See *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990).

jurisdiction purposes. Further, based on publicly available information, no partner of View Apartments LP is a citizen of New York or Illinois for diversity jurisdiction purposes.

8. Accordingly, there is now, and was at the time this action was filed, complete diversity of citizenship between View and Zurich.

B. Amount in Controversy

9. If it is facially apparent that View's claim exceeds \$75,000, exclusive of interest, costs, and attorney's fees, Zurich's burden to establish that the amount in controversy exceeds this Court's jurisdictional threshold is satisfied.²

10. In its Original Petition, View seeks monetary relief over \$1,000,000.³

11. Thus, it is facially apparent that View's claim exceeds the jurisdictional minimum of \$75,000.01.

12. Because there is complete diversity among the parties and the amount in controversy requirement is satisfied, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). Removal is therefore proper.

V. CONCLUSION

13. Zurich will promptly file a copy of this Notice of Removal with the clerk of the state court where the action is pending.

14. Therefore, Zurich hereby provides notice that this action is duly removed.

WHEREFORE, Defendant Zurich American Insurance Company requests that this action be removed from the 98th District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division, and that this Court enter such further

² *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1999).

³ See View's Original Petition at page 14, ¶76, attached hereto as **Exhibit A**.

orders as may be necessary and appropriate.

Respectfully submitted,

ZELLE LLP

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Notice of Removal has been served this 16th day of October 2017, by electronic filing as follows:

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